



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Independence in Complaints Procedures

Citation for published version:

Gulland, J 2009, 'Independence in Complaints Procedures: Lessons from Community Care', *Journal of Social Welfare and Family Law*, vol. 31, no. 1, pp. 59-72. <https://doi.org/10.1080/09649060902761255>

Digital Object Identifier (DOI):

[10.1080/09649060902761255](https://doi.org/10.1080/09649060902761255)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Journal of Social Welfare and Family Law

Publisher Rights Statement:

© Gulland, J. (2009). Independence in Complaints Procedures: Lessons from Community Care. Journal of Social Welfare & Family Law, 31(1), 59-72doi: 10.1080/09649060902761255

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Independence in complaints procedures: lessons from community care

Jackie Gulland*

Department of Applied Social Science, University of Stirling, Stirling, Scotland

This article looks at internal complaints procedures and considers the role of independent elements in procedures which are designed to be simple, informal and low cost. Taking the example of local authority community care services as a case study, the article discusses research which looked at the views of complainants, potential complainants and those who run the procedure. Most people do not make formal complaints at all and very few people seek an independent review of their complaint. When they do seek such a review, they expect it to be transparently independent of the body complained about. The article concludes that the current system of local authority complaints review panels or committees does not provide the independent element that complainants seek.

Keywords: complaints; rights; social care; ombudsmen; administrative justice

Introduction

Despite their low profile in the past, complaints procedures have become the centre of a renewed interest by the policy community (eg Crerar 2007, Department for Constitutional Affairs 2004, House of Commons 2008, Law Commission 2008, National Audit Office 2005, National Audit Office 2008). In contrast with more formal legal procedures, internal complaints mechanisms are seen as cheap, easy to use, flexible and have been hailed as an opportunity to provide 'insights ..on how to make government work better' (House of Commons 2008, p. 29).

Complaints procedures are often contrasted with more formal appeal procedures but a recent report by the National Audit Office considers that the distinction between complaints and appeals is unhelpful, arguing that what we need is a combined system for 'getting things put right' (2005, p. 7). In a sense the local authority complaints procedure for community care services provides this already: since there is no appeal mechanism, all grievances about local authority community care services must be dealt with initially through internal complaints procedures. This looks like an ideal system for 'getting things put right' without the trappings and expense of formal mechanisms. It provides a useful case study for investigating the expectations of complainants.

Purely internal mechanisms for resolving citizen's grievances have value in allowing relatively easy participation and encouraging grievances to be heard at a level close to where the problem arose. They should also enable organisations to learn from their mistakes and improve services in the future. They provide a means of 'proportionate dispute resolution' (Department for Constitutional Affairs 2004, p. 6). However, as Le Sueur argues, although a mechanism aimed at 'nipping disputes in the bud has a commonsense attraction that is hard to resist' (2007, p. 327), there is a danger that other important values are lost. Here, Le Sueur is pointing to the conflict between different 'models of justice' and arguing that where this conflict arises 'legal' values should be valued more highly in order to protect citizens' rights (p. 335). Adler (2006) shows that models of justice provide a guide to understanding criticisms of particular dispute mechanisms. Adler argues that 'legal models', which rely on values such as independence and due process, contrast with alternative models of justice where other qualities are valued, such as following bureaucratic rules, providing information to management or ensuring that 'consumer' views are listened to. Adler considers that complaints mechanisms do not usually fall within the legal model of justice and are more likely to be used to promote consumerism in public services (Adler 2006).

*Email: Jackie.gulland@stir.ac.uk

Consumerism has also been described as giving the welfare ‘consumer’ a ‘voice’ in the process, recognising that the classic alternative of ‘exit’ (which would be available in a true market) is not usually available to users of public services. Consumerist models of justice value user participation and opportunities to voice grievances. Mechanisms for the voicing of grievances are internal to the organisation and focus on enabling the user’s voice being heard. ‘Legal’ values such as independence are not relevant to the process.

One could argue, of course, that different mechanisms can be used for different purposes and that complaints procedures are appropriate for certain types of grievance, while more formal, legalistic mechanisms such as courts or tribunals are appropriate for others. However, in the absence of more legalistic mechanisms to resolve disputes about community care services, some complainants may expect to see elements such as independence in a complaints procedure. The local authority community care complaints procedure provides this, up to a point, by having a final ‘independent’ review stage. The question remains as to whether it is sufficiently independent to meet complainants’ expectations.

Community care complaints procedures

Since the community care¹ reforms of the 1990s, local authorities have been required to have procedures in place to enable service users to make complaints. These complaints procedures have a final stage which allows an ‘independent’ review of the complaint. In England this is known as the Complaints Review Panel, in Scotland it is the Complaints Review Committee. These are administered by the local authority concerned, although their members are, to an extent, independent. In Scotland, committees consist entirely of independent members, although the administration of the committees is still carried out by the local authorities. In England, where the complaints procedure was updated in 2006, complaints review panels are made up of an independent chair, and two panel members, of whom one should be independent, while the other may be a local authority elected member (Department of Health 2006, para. 3.14). In Wales final stage reviews are held by a body which is entirely independent of local authorities (The Social Services Complaints Procedure (Wales) Regulations 2005).

The question of the independent element in community care complaints has been addressed by the courts in terms of whether complaints review panels in England are compatible with Article 6 of the ECHR. The Court of Appeal has held that, although the panel was not in itself independent, the decision making procedure, along with the availability of judicial review, was compatible with Article 6 (*R. (on the application of Beeson) v Dorset CC* [2002] EWCA Civ 1812). Although this case confirms that complaints review panels do not have to be fully independent of the council concerned, a recent report by the Scottish Public Services Ombudsman highlights one of the problems that can arise when there is no independent appeal procedure. The case concerned a dispute about financial assessment for residential care, which had not been to a complaints review committee and where neither the complainant nor his solicitor had been informed of this option. The Ombudsman’s report said:

I am concerned again that the current system is confused and inconsistent throughout Scotland and in particular that there is no recognised, independent, appeals process for such financial assessments and decisions. (Scottish Public Services Ombudsman 2006, para. 36).

In making this statement, the Ombudsman recognised that, although councils have a statutory requirement to offer complaints review committee hearings, in this case the council had failed in its statutory duties. While this may have been an isolated incident, it raises the issue of whether an ‘independent’ review can be considered independent if the authority complained about controls the procedure.

The local government ombudsmen in England have also raised concerns about the operation of complaints review panels, arguing that many complainants’ dissatisfaction with the process often arises when local authorities fail to implement the recommendations of review

panels (White 2007). Recent cases illustrate the problem. In one local government ombudsman report maladministration was found where the council had no mechanism 'to resolve the conflict between what the Grants Section would fund and what the Community Occupational Therapist and the complainant felt was necessary to meet his wife's needs' (Leeds City Council 05/C/13157), while in another report maladministration was found when the council 'delayed in responding to the Review Panel findings, and disregarded them' (Birmingham City Council 05/C/18474).

Recognising that the current arrangements may not be satisfactory, the Law Commission's review of social care law in England and Wales includes a review of redress mechanisms including 'consideration of whether there is a need to establish a tribunal to provide independent merits review of local authority community care decisions' (Law Commission 2008b, p127)

Existing research on complaints procedures

Statistics on community care complaints are difficult to come by. Although local authorities are required to produce annual reports on their complaints procedures, not all authorities do so and those that do vary considerably in terms of the information they provide. Simons' research in 1995 showed that these reports varied, from the 'frankly minimalist' to detailed and well produced public documents (Simons 1995, p. 28). More recent research suggests that little has changed. The National Audit Office reviewed a sample of English local authority reports and found that their 'quality, coverage and content varied considerably' (National Audit Office 2008, p. 41), while a review of Scottish reports showed similar variation (Gulland 2003).

Complaints review panel and committee hearings are very rare, with recent figures suggesting that the average in England is 3.6 per authority, per year, although this average conceals a range of no hearings at all to a maximum of 24 (Ferris 2006, p. 64). The National Audit Office estimated that 200 hearings were held in England during 2006/07, contrasting with 795 complaints relating to social care reaching the Local Government Ombudsman (National Audit Office 2008, p. 38). Levels in Scotland are also low, with an average of 2 per authority and many authorities reporting that they had held no committee hearings during the past year (Gulland 2003).

Official statistics reveal very little about community care complaints and, although some research was carried out on community care complaints procedures in the early 1990s (Dean *et al* 1996, Preston-Shoot 2001, Simons 1995) and the National Audit Office has carried out a recent survey of social care complaints (National Audit Office 2008), there has been even less on complaints review committees specifically. Dean *et al* (1996) carried out observation of Review Panels in England. Their findings indicate that, at this early stage in the development of the procedure, the role of the panels was not clear and was not consistent across authorities (Dean *et al* 1996). More recently, Ferris (2006) looked at the operation of the complaints review panel in England from the perspective of complaints officers and panel members, and concluded that review panels in England still varied from one local authority to another but that, despite this variation, they were better than the alternatives under consideration in 2005 (Williams and Ferris 2005). While the research conducted by Ferris considers the value of the complaints review panel from the perspective of panel members and local authority complaints officers, very little research has considered the views of complainants.

Rather more research has been carried out with users of health complaints procedures (eg Department of Health 2003, Lloyd-Bostock and Mulcahy 1994, Mulcahy and Tritter 1998, Mulcahy 2003, Posnett *et al* 2001, Scottish Executive 2003, Wallace and Mulcahy 1999). There are many parallels between the issues that arise in health complaints and in complaints about community care. However, there are also differences. Simons and Preston-Shoot both argue that most complaints about community care are about 'allocation of resources' (Simons 1995,

Preston-Shoot 2001). The implication is that people complain in order to achieve some reallocation of these resources. Another reason for complaining could be to challenge a local authority's decision on financial assessment for residential care; a clear case of using the mechanism as an 'appeal'. This contrasts with findings from the health complaints research literature which suggests that health complaints are often made after the fact and are less likely to be about reallocation of resources than about 'calling the authority to account' (Mulcahy 2003).

Despite the differences between the two services, the research on health complaints procedures is helpful in understanding complainants' attitudes to complaining and in particular in understanding complainants' perceptions of the value of independence. The complaints procedures available to users of NHS services in the 1990s came under fire because the 'independent' element was perceived not to be sufficiently independent of the service providers (Department of Health 2003; Mulcahy 2003, Posnett *et al*, 2001; Scottish Executive 2003) and this has led to reform of the health complaints procedures, including the removal of the quasi independent review panels and their replacement with more formally independent bodies.

Complainants' views on independence and community care complaints

Background to the research

The research on which this article is based attempts to fill the gap in our knowledge about the operation of community care complaints procedures. The research was carried out in two Scottish local authorities in 2005, involving qualitative interviews with thirty-six people who had made formal complaints through the social work complaints procedure, as well as interviews with staff who ran the complaints procedures (Gulland 2007). The complainants were contacted via the local authorities' complaints departments and had made a range of different complaints about community care services, including assessment, home care, day centres, equipment and adaptations, support workers, residential care and financial arrangements.

Very few interviewees had any experience of using the complaints review committee and most of the research findings concerned what happened at earlier stages of the procedure. The research showed that these early stages of the procedure are not always followed and that complainants are often unclear about where they are within the procedure. Reasons for this are related to the way that the authority reacts to the initial complaint, the effectiveness of the information provided to the complainant and the reaction of the complainant to this information. Complaints are not always clearly 'upheld' or 'not upheld', and even if they are, the status of the complaint is not always apparent to the complainants. This has implications for complainants' ability to have their cases heard by an independent body. For more information about complainants' experiences of these earlier stages of the procedure, see Gulland (2007).

Three complainants interviewed had attended a complaints review committee. In addition, one had requested a hearing but it had not been held because his complaint was resolved before it reached this stage. All of these complaints were made against one local authority. None of the individuals interviewed in the second authority had been to a hearing although some advocates from the voluntary sector had experiences of assisting clients with complaints to the complaints review committee. In both authorities there were complainants who, although dissatisfied with the response to their complaint, had not pursued it as far as a complaints review committee. The experiences of these complainants can help us to understand the role of independence in the procedure.

Access to the complaints review committee

An important aspect of the complaints review committee is the ease with which complainants can access it. In both the local authorities looked at committees consisted entirely of independent members, while the organisation and administration of the committees was carried out by an administrative department of the local authority, other than that responsible for social work.

Complainants were required to make a formal request for a complaints review committee hearing within twenty-eight days of receiving a formal response to their original complaint.

Complaints officers felt that the procedure was straightforward and that whenever a complaint was formally dealt with, the complainant should be informed of their rights to take it to the next stage, although they were aware that some would slip through the net:

We try and catch letters that haven't informed people of their rights. The situation should be that the final formal response from us should advise them of their rights to go to a complaints review committee. (Complaints officer, local authority 1)

So when I send [...] a letter to the complainer which says 'you may expect to receive a formal response within 28 days. Once you've received that response, if you are not happy' ... 'if you have any cause for dissatisfaction please come back to me and I will advise about the next stage'. Sometimes I will have advised people already that there is a review committee. Most people, I will have mentioned the review committee to. (Complaints officer, local authority 2)

One problem with this approach is that it assumes that complainants have received a formal response to their complaint in the first place, and recognise it as such. The research on what happens at earlier stages suggests that this is not always the case. A complainant, whose dispute concerned a payment for residential care, had not taken her case as far as a complaints review committee, because she was not aware of this right, but felt it would have been helpful to have an independent adjudication of the case:

If they had said, finally, 'we understand what you are saying ... but you owe this money', I would maybe hold up my hands and say 'OK then' even though morally, I don't think [my relative] should [pay] but I would probably say 'yes she will [pay]' but I feel they've just railroaded over me. They haven't listened to what I've said. (Complainant)

Of those who did take their complaint as far as the complaints review committee, two had found accessing it straight forward. One complainant had been sent information about how to apply to the committee by the office that was causing the problem. Others had found more difficulty accessing the review committee, including a complainant, who described how he had reached it eventually:

We managed in the end to get to a review committee against the manager's wishes. [...] He was writing to the complaints officer opposing us having a review committee on the grounds that it was outside the time limit. Outside the time limit was caused by the manager, by delaying and delaying. That went on for eighteen months. (Complainant)

Another had attempted to take his case to a complaints review committee but the case had been resolved before he got to it. He had found some difficulty persuading the council that he had this right, however:

So there was correspondence back and forwards until finally I wrote to them and said that their staff didn't seem to appreciate that there is a complaints procedure and the complaints procedure is not finalised until it is taken to a [complaints review committee] and I can elect to keep on going. (Complainant)

A voluntary sector advocate described how one of her clients had tried and failed to reach a complaints review committee. She had helped her client to write a letter requesting a complaints review committee, following the instructions in the council leaflet but the letter had been passed instead to the director of social work. The client had given up at this point because he felt that he could go no higher than the director of social work.

Other individual complainants said that they did not know that they had the right to take their complaint this far or that they had sent several letters to higher levels of the social work department without being informed of the complaints review committee procedure. Another advocate had experience of occasions where local authorities had refused to allow a complaint to go to a complaints review committee because 'it wouldn't be worth it' or 'it wasn't relevant'. His

view was that local authorities had too much control over whether or not to hold a hearing, arguing that:

Justice isn't seen to be done if the Director says 'I'm not playing' (Advocate)

One of the complaints officers did confirm that sometimes complaints would not reach the complaints review committee if the local authority thought they were not appropriate. Likely reasons for refusing to hold a committee hearing included that the complainant wanted something that the committee did not have the power to do, or that the complainant had 'changed their complaint'. This approach assumes that complainants are clear about what they want by complaining and does not enable the complaints review committee to act in an inquisitorial fashion to get to the heart of the complaint or to suggest alternative solutions. The complaints officer in the other authority, taking a more hands on approach, explained that his role was to advise the complainant of alternative mechanisms at an earlier stage. It seems that this would prevent the types of problem described above.

Complainants clearly had a range of alternatives to following the complaints procedure through to the complaints review committee. There were two main reasons for not following it: lack of information about the options and lack of confidence that there would be any point in pursuing it further. A complainant described how she had no confidence that the complaints review committee would treat her complaint independently:

I could take it further [but] you can't take on [name] council and their lawyers in their legal department. Nobody ever wins so what's the point in going down that road? (Complainant)

This illustrates the lack of trust that some complainants have in the complaints procedure.

Accessing the complaints review committee does not seem to be as straightforward as the procedure suggests. There is an initial problem with identifying whether or not a 'formal complaint' has been recognised as such. If it has, and the complainant has received a formal response, then s/he should receive information explaining about the complaints review committee. Evidence from other local authorities in Scotland suggests that there is a wide variety of informal procedures between the 'formal response' and accessing the complaints review committee, with some authorities holding an intermediate 'appeal' stage and others making every effort to negotiate with the complainant in order to avoid a committee hearing (Charlton 2001, p. 17). There seems to be a range of obstacles at this stage which can prevent the complainant getting to a committee.

What happens at the complaints review committee?

Despite some of the difficulties in accessing the complaints review committee, three complainants had attended a hearing. In addition, one of the advocates interviewed had assisted several complainants at committee hearings. Although this is a very small number, all four felt that the complaints review committee, despite being independent of the council, was very reliant on legal advice from the council's legal adviser. They felt that this compromised the independence of the committee.

One complainant described how he was happy with the way the committee had conducted itself. However, after the hearing the final decision of the committee was that the complaint was only partially upheld. The complainant believed that the legal adviser had intervened and had advised the committee that it could not fully uphold the complaint:

We reckon that when we went away the legal person pointed out to them [details relating to the case] ...and that the backtracking started then. (Complainant)

The other complainants who had attended a hearing also felt that the committee had been influenced by the legal adviser:

So there were two people from the [legal] section of the council sitting there, guiding them and the wording of decision was that they couldn't approve what I was saying. It was word for word what

was in the review. It was virtually word for word the same. They just took the words out of there and said that they didn't approve it - they couldn't support me. (Complainant)

I think the mechanism is right but I'm not convinced that the directive given to the panel was unbiased. I certainly came away with that impression, because it wasn't just the meeting, it was the sort of asides I was hearing beforehand. When we were waiting to go in it was made very clear from just talking to the people from the council that the chances were negligible that I would be successful. (Complainant)

An advocate, who had assisted several complainants at hearings, also had this view:

There needs to be a solicitor in the chair and he needs to be independent. He can't be an employee of the council because what we find is that they have a solicitor advising them and he's appointed by the council. They've got an advantage right away because he's defending the council's policy and advising them on what they can and can't do. (Advocate)

Complaints staff felt that it was justified for the council to have legal advice but acknowledged that there was a difference between complaints with a strong 'legal' issue and those which were more to do with communication and misunderstandings. The complaints officers felt that the legalised nature of some complaints meant that the issues were over the heads of the committee members and that a different system was needed. They believed that 'legal' matters should be taken through the courts. They did not seem to realise that it is necessary to take such matters through the complaints review procedure first:

What they have to say is, if you want to challenge this you really can't do this through the complaints system at all, you'll have to do it through the courts and I do sometimes think that there are some things that shouldn't be in the complaints system, they should be in the courts where people can be sat down and asked questions on oath and where the clever lawyers aren't all on the same side. (Complaints officer)

The role of the legal adviser in the complaints review committee hearing is contentious. On the one hand, the local authorities argue that it is important to have someone with legal knowledge to advise the committee but, on the other hand, complainants see the legal adviser as biased towards the council. Ferris notes in her research on complaints review committees in England that the presence of a local authority legal adviser could create a 'conflict of interest' (Ferris 2006, p.151). The evidence from this research certainly suggests that this is the view of complainants.

What happens after the complaints review committee?

The findings of the complaints review committee are not binding. The case will be referred to a relevant council committee which will then decide what action, if any, should be taken. Local authority staff thought that the relevant committee would usually 'rubber stamp' the decision and this would usually be based on very little information about the case. This would mean that, to overturn the decision, the committee would have to look at the whole case again.

Only one of the cases in this research had been upheld (at least in part) by the complaints review committee. Although the committee had partially upheld the complaint, the complainant was unhappy with the result and, after further correspondence, it had then gone to a further meeting with social work staff. He was not happy with the way it was dealt with at this stage.

Another complainant was also unimpressed with what had happened after his hearing. His complaint had not been upheld and he wanted to pursue it further:

What did I think? [laughs] Not a lot I can assure you. When I got the note saying that they couldn't support my case I asked for the minutes of the meeting. They said 'oh we don't do minutes'. ... So I did eventually get what they called minutes of the meeting. They gave me about six lines. We'd argued for about an hour to an hour and a half and they gave me six lines of what was supposed to be the minutes of that review hearing. (Complainant)

Local authority staff confirmed that minutes would be very brief, in order to maintain the anonymity of the complainants and that it would not be necessary to have a fuller record. I asked whether it might be necessary if the complainant wanted to take the complaint further (for example, to the Ombudsman) but the view was that this had not happened in recent years so it would not be necessary.

Given some of the apparent difficulties with the running of the complaints review committee, from the perspective of the complainant and the contrast that this provides with the views of the professionals, it is important to look at the purpose of the complaints review committee.

The role of the complaints review committee

The role of the complaints review committee reflects, at least in part, the purpose of complaints procedures in general. Harlow and Rawlings show that the philosophy behind the Citizen's Charter (the philosophy which informed the development of health and community care complaints procedures) gives complaints mechanisms a 'dual function': the primary function being to provide information to managers, while the secondary function is to provide a means of redress for users of the system (Harlow and Rawlings 1997, p. 405).

Dean *et al.* (1996) consider that the complaints review committee has a variety of roles. Complaints review committees may provide an opportunity for: case review, policy review, monitoring performance, or adjudicating on individual rights (p. 340). The evidence from this research suggests that the committees were not being used as a means of policy review or adjudicating on individual rights. The role of the legal adviser meant that the council was directing the committee to stay within council policy. The clear opinion of local authority staff was that committees should not be used for resolving 'legal' disputes. The role of monitoring performance is difficult to see as very important when so few cases get this far. This leaves case review as the most likely role. Another possible role, falling within the consumerist model of complaints procedures, is one of providing customer satisfaction.

The overwhelming view of social work staff was that the complaints review committee was a 'last resort' to be used only if there was really no other alternative solution. One social work manager said that complaints would only reach this stage if they were being 'driven by advocates'. Another manager felt that the purpose of the review committee was to show the client that the council was taking the complaint seriously. This view was confirmed by another manager, who felt that the only point of complaints review committees was to give complainants an opportunity to air their grievance, because it would be very unlikely that the committee would change anything:

Anything that gets to the complaints review committee, anything arbitrary will have been resolved at the first point of contact so invariably it gets to the complaints review committee it's because it's not resolvable and there's been a fundamental failure to agree, that will never be changed. I suspect if you look at the decisions they make they will very rarely have been overturned. (Social Work Manager)

The different perspectives held by interviewees in this research, in part, reflect different understandings of the purpose of the complaints procedure. Those who attended complaints review committee hearings did not perceive them to be independent. The question of how independent they need to be depends on the purpose of the committees. So long as their role is one of 'customer satisfaction' or is mainly related to managerial concerns with improving services or with reviewing policy then independence may not be crucial. However, if committees have a role in providing adjudication on legal rights, as some complainants seem to expect, then independence is more important. Social work staff did not seem to see the complaints review committees as a tier on the ladder of legal rights. If this is not their role then a question arises as to where complaints about 'legal' matters should go, since there is currently no alternative mechanism.

Recent policy developments

Since the introduction of statutory complaints review committees in the early 1990s, policy on the role of second tier reviews in social care complaints has see-sawed backwards and forwards. The Department of Health carried out a consultation exercise on social work complaints in 2000 (Department of Health 2000) which did not propose any changes to the complaints review panel. This consultation was superseded by another consultation in 2004 (Department of Health 2004). This proposed that the review committees should be abolished and that second tier social care complaints should go to the regulatory body, the Commission for Social Care Inspection. This proposal was unpopular with the social work community (see eg BASW 2004) and was dropped by the time the revised procedure was introduced in 2006, with the complaints review panels retaining their role (Department of Health 2006). The next suggestion was that social care complaints procedures should parallel health complaints procedures and that second tier reviews should be heard by a combined health and social care regulator (Department of Health 2006b). At the time of writing, it is now proposed that the complaints review panel should be abolished and that complaints should go straight to the Local Government Ombudsman (Department of Health 2007).²

Meanwhile, in Scotland, a working group was set up in 2003 to consider changes to the social work complaints procedure. The working group did not complete its task and was overtaken by events in 2007 when the Scottish Executive commissioned a review of 'regulation audit, inspection and complaints handling in public services', including the role of complaints handling in its remit (Crerar 2007). The Crerar Report focuses on the problems caused by the complexity and diversity of complaints procedures for public services in Scotland. The general thrust is a recommendation to simplify scrutiny procedures, including complaints, and to cut red tape. At the time of writing, an action group set up as a result of the Crerar Review proposes the abolition of the complaints review committee and that the Scottish Public Sector Ombudsman should hear all second tier complaints about public services in Scotland (Scottish Government 2008).

The general direction of policy on social work complaints seems to be following that of health complaints and moving towards a fully independent review. This would seem to fit with the needs of complainants, who having pursued their complaint this far, seek a hearing which is transparently separate from the local authority with which they have a dispute.

Conclusion – independence in internal complaints procedures

Previous research on social work complaints and parallel research on health complaints suggested that there were many problems with having an in-house body as the final stage of an internal complaints procedure and that it led to perceptions (whether well founded or not) of bias. This research confirms the importance of these perceptions. As with the earlier stages of the complaints procedure, many complainants were not aware of their position within the procedure, did not know what rights they had and took a variety of actions to pursue their complaints which did not fall within the procedure. While this can still lead to problems being resolved, it can also mean that complainants are denied their right to a hearing by a complaints review committee.

The overall impression gained from this data is that, although complaints review committees attempt to provide an 'independent' view of complaints, the perception amongst complainants is that they are not independent. This is partly because the local authority is responsible for organising them and, particularly, for providing legal advice to the committee members. There was some indication, that the local authority's administration of the committees can lead to some people being prevented from reaching a hearing, either by a lack of information or by a, perhaps unintended, 'blocking' of some complaints.

Complainants' expectations of independence at this stage of their complaints reflect a 'legalistic' view of the procedure. While complaints procedures clearly have other purposes, and perhaps are more often intended as mechanisms for maximising 'consumer' satisfaction or providing information to management, they also have a role in protecting 'legal' rights. In this role, they need to be seen to contain appropriate procedural protections, including a genuine independence from the body complained about.

Richardson and Genn, writing about the tribunal system, have confirmed that independence is now regarded as an important feature of appeal mechanisms but that it is important to distinguish between independence and impartiality, where impartiality does not necessarily involve institutional separation (Richardson and Genn 2007). This would suggest that an arms-length review mechanism such as the complaints review committee ought to be able to provide sufficient impartiality. However, Richardson and Genn, building on the work of Genn et al 2006, also stress the importance of trust. They argue that citizens whose cases reach these review bodies must feel that they can trust the mechanism that is reviewing their case and that formal independence does not necessarily guarantee this. Research by Harris (2007) on complaints in higher education suggests that, even when an independent element is introduced, complainants can be blocked (or at least deterred) from reaching the independent stage by the actions of authorities at earlier stages (Harris 2007, p. 581). This suggests that an important element of independence in dispute mechanisms is its role in establishing trust and that this is often as much about perceptions as about administrative technicalities.

This paper discusses the findings from a small piece of qualitative research on complaints review committees. The research suggests that, by the time cases reach complaints review committee, complainants are unlikely to trust a mechanism that has been set up and administered by the local authority. There is considerable cynicism amongst community care service users about the ability of internal bodies to deal with their grievances. The 'straight to the ombudsman' route, where initial complaints are dealt with internally but after that complaints go to the relevant ombudsman, as now proposed in both England and Scotland, appears to offer many advantages. Some of the complainants in this study talked about their knowledge and experience of the ombudsman although generally there was a very low level of knowledge. However several people believed that an 'independent body' like an ombudsman should be available to consider their complaints. Whether they are more likely to trust an institution such as an ombudsman is a question for further research.

Acknowledgements

This article is based on research funded by an ESRC PhD studentship at the University of Edinburgh. Further development was carried out during a post-doctoral fellowship at the University of Strathclyde. I am grateful to the people whose experiences of complaining formed the basis of the research and to the local authorities which provided research access. I would like to thank Brian Thompson for comments on an earlier draft of this article.

Notes

1. Community care services in this context consist of services provided by local authorities, or in some cases funded by local authorities, to enable people with disabilities to live in the community. In terms of the legislation, community care also includes residential care where it is funded by the local authority. Community based services could include home helps, equipment and adaptations, day centres and support services.
2. For an analysis of the relative merits of different options under consideration in 2005, see Gulland 2006.

References

Adler, M. 2006. 'Fairness in context', *Journal of Law and Society*, 33, 4, 615-638.

-
- British Association of Social Workers 2004. *An Independent Voice BASW response to CSCI Consultation An Independent Voice: Proposals for the independent review stage of the new social services complaints procedure*, <http://www.basw.co.uk> [Accessed August 2005]
- Crerar, L. 2007. *The Crerar Review: The Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland*, Edinburgh, Scottish Government
- Dean, H., Gale, K. and Woods, R. 1996. 'This isn't very typical I'm afraid: observing community care complaints procedures', *Health and Social Care in the Community*, 4, 6, 338-346.
- Department for Constitutional Affairs 2004. *Transforming Public Services: Complaints, Redress and Tribunals Cm6243*, London, HMSO.
- Department of Health 2000. *Listening to People: a consultation on improving social services complaints procedures*, London, Stationery Office.
- Department of Health 2003. *NHS Complaints - making things right*, London, Department of Health.
- Department of Health 2004. *Learning from Complaints. Consultation on Changes to the Social Services complaints Procedure for Adults*, <http://www.dh.gov.uk> [Accessed October 2004]
- Department of Health 2006. *Learning from Complaints. Social Services Complaints Procedure for Adults*, London, Department of Health
- Department of Health 2006b. *Our Health, Our Care, Our Say: a new direction for community services January 2006 Cm 6737*, London, Department of Health
- Department of Health 2007. *Making experiences count: a new approach to responding to complaints - a document for information and comment.*, Leeds, Department of Health.
- Ferris, K. 2006. *An analysis of the complaints review panel under part III of the Children Act 1989 and NHS & Community Care Act 1990*, Unpublished PhD thesis, University of Sheffield.
- Genn, H., Lever, B., Gray, L. and Balmer, N. 2006. *Tribunals for Diverse Users*, Department for Constitutional Affairs 2006.
- Gulland, J. 2003. *Community Care Complaints Procedures in Scotland*, dissertation submitted for the MSc by Research (Social Policy), University of Edinburgh.
- Gulland, J. 2006. 'Second-tier reviews of complaints in health and social care', *Health and Social Care in the Community*, 14, 3, 206-214
- Gulland, J. 2007. *Complaining, Appealing or Just Getting it Sorted Out: complaints procedures for community care service users*, PhD Thesis, University of Edinburgh
- Harlow, C. and Rawlings, R. 1997. *Law and Administration* (2nd Edition), London, Butterworths.
- Harris, N. 2007. 'Resolution of student complaints in higher education institutions', *Legal Studies*, 27, 4, 566-603.
- House of Commons 2008. *Public Administration Select Committee When Citizens Complain Fifth Report of Session 2007-08 HC 409*.
- Law Commission 2008. *Housing: Proportionate Dispute Resolution Cm 7377*, London, Law Commission.
- Law Commission 2008b *Adult Social Care Scoping Report*, http://www.lawcom.gov.uk/docs/adult_social_care_scoping_report_2008.pdf [Accessed December 2008]
- Le Sueur, A. 2007. 'Courts, Tribunals, Ombudsmen, ADR: Administrative Justice, Constitutionalism and Informality', in Jowell, J. and Oliver, D. (eds.), *The Changing Constitution*, Oxford, Oxford University Press
- Lloyd-Bostock, S. and Mulcahy, L. 1994. 'The social psychology of making and responding to hospital complaints. An account model of complaint processes', *Law and Policy*, 16, 123-147.
- Mulcahy, L. 2003. *Disputing Doctors: the socio-legal dynamics of complaints about medical care*, Maidenhead, Open University Press.
- Mulcahy, L. and Titter, J. 1998. 'Pathways, pyramids and icebergs: mapping the links between dissatisfaction and complaints', *Sociology of Health and Illness*, 20, 6, 825-847.
- National Audit Office 2005. *Citizen Redress: What citizens can do if things go wrong with public services*, London, The Stationery Office.
- National Audit Office 2008. *Feeding back? Learning from complaints handling in health and social care*, London, The Stationery Office.
- Posnett, J., Jowett, S., Barnett, P. and Land, T. 2001. *NHS Complaints Procedure National Evaluation*, York, Health Economics Consortium/NFO System Three Social Research.

-
- Preston-Shoot, M. 2001. 'A triumph of hope over experience? Modernising accountability: the case of complaints procedures in community care', *Social Policy and Administration*, 35, 6, 701-715.
- Richardson, G. and Genn, H. 2007. 'Tribunals in Transition: resolution or adjudication', *Public Law*, 116-141.
- Scottish Executive 2003. *Reforming the NHS Complaints Procedure Patient Focus and Public Involvement consultation paper*, Edinburgh, Scottish Executive.
- Scottish Government 2008. *Fit for Purpose Complaints System Action Group Report to Ministers*, <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/ReporttoMinisters> [Accessed August 2008]
- Scottish Public Services Ombudsman 2006. *East Dunbartonshire Council Report Number: 200503530, 19 December 2006*, Edinburgh, Scottish Public Services Ombudsman.
- Simons, K. (1995), *I'm not complaining but ... Complaints procedures in social services departments*, York, Joseph Rowntree Foundation.
- Wallace, H. and Mulcahy, L. 1999. *Cause for complaint*, London, Public Law Project.
- White, J. 2007. 'Social Welfare and Family Law Issues and the Local Government Ombudsmen for England', *Journal of Social Welfare and Family Law*, 29, 1, 77-86.
- Williams, C. and Ferris, K. 2005. 'Proposals to Transfer Complaints Panels to the Commission for Social Care Inspection - Throwing the Baby out with the Bath Water?' *Journal of Social Welfare and Family Law*, 27, 2, 199-212